IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 25 of 2003 (S/B)

Date of decision: 20th August, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice J.C.S. Rawat.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 25 of 2003 (S/B)

Union of India and others ..... Petitioners

Versus

Central Administrative Tribunal
Allahabad Bench, Circuit Sitting
at Nainital and another ..... Respondents

.....

Sri Rakesh Thapaliyal, learned senior counsel for the petitioner.
Sri Narain Datt, learned counsel for the respondents. .

Coram: Hon. V.S.Sirpurkar, C.J.
Hon. J.C.S. Rawat, J.

Dated: August 20, 2004

[Per Hon'ble the Chief Justice]

1. This writ petition is preferred by the Central Government against the judgment dated 22.10.2002 of the Central Administrative Tribunal, whereby the Tribunal allowed the original application filed by the employee in part. The Tribunal allowed had maintained the order of termination from the post of Mechanic/Driver and had directed the employee to be allowed to join as contingent *Khalasi* within one month from the date copy of the order is filed with the department. In fact, the petitioner had selected the employee as a Motor Mechanic-cum-Driver from the original post of *Khalasi* and had termination his services, even without holding any departmental enquiry. Now, Tribunal, however, ignored that aspect and directed that the employee should be allowed to join in his original capacity as contingent *Khalasi*. It is to be noted that employee has served for substantial period in his capacity as contingent *Khalasi* and he was given appointment as Motor Mechanic-cum-Driver. We have already admitted the writ petition by the employee. So far as the remaining portion is concerned that the employee should be allowed to join in the original capacity of contingent *Khalasi,* we feel that the Government has no case in view of the failure on its part to hold departmental inquiry. A perusal of records shows that his services were terminated as a Motor-Mechanic for misconduct on his part. Recource to Rule 5(1) of Central Government Servants(Temporary Service)Rules, 1965

could not have been taken in view of the stand taken by the petitioner before the Tribunal, even if the termination order was silent about the misconduct. Even in this petition, the petitioner has hurled the charges at the respondent. In that view, we must hold that the termination was a colourable exercise. The Government is not content with the Tribunal's order and now wants to dispense with the service altogether though in the termination order itself respondent-employee was asked to join as a Khalasi. We do not find any merits and would dismiss the petition.

2. Writ petition of the Government is, therefore, dismissed.

3. The employee is permitted to approach the Government for allowing him to join his duties. The employee may approach this Court in case he is not allowed to join.

(J.C.S.Rawat, J.) **(V.S.Sirpurkar,C.J.)**
20.8.2004 **20.08.2004**

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WPSB No.25/03

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.
(Misc. Appln. No. 401 of 2005)

Heard learned counsel for the parties.

We have perused the application supported by an affidavit. We are not satisfied with the reasons stated in the application. Hence, the application is misconceived and is rejected accordingly.

(B.C.K., J.) **(P.C.V., J.)**

22.03.2006
Rajeev Dang